

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
v.	:	
TARIK IBN OSMAN SHAH,	:	S2 05 Cr. 673 (LAP)
a/k/a "Tarik Shah,"	:	
a/k/a "Tarik Jenkins,"	:	
a/k/a "Abu Musab,"	:	
RAFIQ SABIR,	:	
a/k/a "the Doctor,"	:	
MAHMUD FARUQ BRENT,	:	
a/k/a "Mahmud al Mutazzim," and	:	
ABDULRAHMAN FARHANE,	:	
a/k/a "Abderr Farhan,"	:	
Defendants.	:	

**DECLARATION AND CLAIM OF PRIVILEGE**  
**OF THE ATTORNEY GENERAL OF THE UNITED STATES**

I, Alberto R. Gonzales, hereby declare the following:

1. I am the Attorney General of the United States of America and head of the United States Department of Justice, an Executive Department of the United States. I have official custody of and control over the files and records of the United States Department of Justice. The matters stated herein are based upon my knowledge, upon review and consideration of documents and information available to me in my official capacity as Attorney General, upon discussions that I have had with other Justice Department officials, and upon conclusions I have reached after my review of this information.

2. I submit this declaration pursuant to the Foreign Intelligence Surveillance Act of 1978 ("FISA"), as amended, in connection with the above-captioned case. Tarik Ibn Osman Shah and Rafiq Sabir, by and through their attorneys, have filed motions seeking, among other things, the suppression of FISA information and the disclosure of the applications submitted to, and the orders issued by the United States Foreign Intelligence Surveillance Court (the "FISC"), and other related documents (hereinafter collectively referred to as "FISA materials").


3. Based on the facts and considerations set forth below, I hereby claim that it would harm the national security of the United States to disclose or have an adversary hearing with respect to the FISA materials. The United States is submitting the pertinent classified documents to this Court as part of a Sealed Exhibit so that this Court may conduct an *in camera*, *ex parte* review of all issues relating to the legality of the FISA collection at issue. My claim of privilege also extends to the classified portions of any memoranda and briefs the Government may file and any oral representations the Government may make in connection with this litigation that reference the classified information contained in the FISA materials.

4. In support of my claim of privilege, the United States is submitting to the Court for *in camera*, *ex parte* review, the Declaration of Joseph Billy, Jr., Acting Assistant Director,

Counterterrorism Division, Federal Bureau of Investigation. Mr. Billy's Declaration sets forth, in detail, the facts upon which my claim of privilege is based. The Declaration of Mr. Billy is classified at the "SECRET" level. Relying on the facts set forth therein, I certify that the unauthorized disclosure of the FISA materials reasonably could be expected to cause serious damage to the national security of the United States. Among other things, the FISA materials contain sensitive and classified information concerning United States intelligence sources and methods and other information relating to efforts of the United States to conduct counterterrorism investigations, including the manner and means by which those investigations are carried out, and that to further reveal the information would damage the national security interests of the United States.

5. I respectfully request that the Court treat the contents of the Sealed Exhibit, for security purposes, in the same manner as the contents were treated in the submission to the Court, and to return the Sealed Exhibit to the Department of Justice upon the disposition of the instant motion. The Department of Justice will retain the Sealed Exhibit under the seal of the Court subject to any further orders of this Court or other courts of competent jurisdiction.

Pursuant to Title 28, United States Code, Section 1746, I  
declare under penalty of perjury that the foregoing is true and  
correct. Executed on SEP 29 2006, 2006.

  
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Alberto R. Gonzales  
Attorney General of the United States